

Appendix

D

Defense and Indemnification

Various State and County Codes and Ordinances

California Government Code Section 830-831.9

831.4. A public entity, public employee, or a grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of:

(a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas and which is not a (1) city street or highway or (2) county, state or federal highway or (3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways.

(b) Any trail used for the above purposes.

(c) Any paved trail, walkway, path, or sidewalk on an easement of way which has been granted to a public entity, which easement provides access to any unimproved property, so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of any condition of the paved trail, walkway, path, or sidewalk which constitutes a hazard to health or safety. Warnings required by this subdivision shall only be required where pathways are paved, and such requirement shall not be construed to be a standard of care for any unpaved pathways or roads.

California Civil Code 846

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section. A "recreational purpose," as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has

been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose as granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

846.1.

(a) Except as provided in subdivision (c), an owner of any estate or interest in real property, whether possessory or nonpossessory, who gives permission to the public for entry on or use of the real property pursuant to an agreement with a public or nonprofit agency for purposes of recreational trail use, and is a defendant in a civil action brought by, or on behalf of, a person who is allegedly injured or allegedly suffers damages on the real property, may present a claim to the State Board of Control for reasonable attorney's

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fees incurred in this civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by the owner or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the owner.

(3) The owner prevails in the civil action.

(b) Except as provided in subdivision (c), a public entity, as defined in Section 831.5 of the Government Code, that gives permission to the public for entry on or use of real property for a recreational purpose, as defined in Section 846, and is a defendant in a civil action brought by, or on behalf of, a person who is allegedly injured or allegedly suffers damages on the real property, may present a claim to the State Board of Control for reasonable attorney's fees incurred in this civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by this public entity or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the public entity.

(3) The public entity prevails in the civil action.

(c) An owner of any estate or interest in real property, whether possessory or non-possessory, or a public entity, as defined in Section 831.5 of the Government Code, that gives permission to the public for entry on, or use of, the real property for a recreational purpose, as defined in Section 846, pursuant to an agreement with a public or nonprofit agency, and is a defendant in a civil action brought by, or on behalf of, a person who seeks to restrict, prevent, or delay public use of that property, may present a claim to the State Board of Control for reasonable attorney's fees incurred in the civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by the owner or public entity or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the owner or public entity.

(3) The owner or public entity prevails in the civil action.

(d) The State Board of Control shall allow the claim if the requirements of this section are met. The claim shall be paid from an appropriation to be made for that purpose. Reasonable attorneys' fees, for purposes of this section, may not exceed

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an hourly rate greater than the rate charged by the Attorney General at the time the award is made, and may not exceed an aggregate amount of twenty-five thousand dollars (\$25,000). This subdivision shall not apply if a public entity has provided for the defense of this civil action pursuant to Section 995 of the Government Code. This subdivision shall also not apply if an owner or public entity has been provided a legal defense by the state pursuant to any contract or other legal obligation.

(e) The total of claims allowed by the board pursuant to this section shall not exceed two hundred thousand dollars (\$200,000) per fiscal year.

San Diego County Code of Regulatory Ordinances

Title 8 Zoning and Land Use Regulations

Division 12. Trail Defense and Indemnification

Chapter 1. General Provisions

SEC. 812.101. TITLE.

This division shall be known and may be cited as the "Trail Defense and Indemnification Ordinance"

(Added by Ord. No. 9233 (N.S.), effective 8-11-00)

SEC. 812.102. PERSONS AFFECTED.

The owner of any parcel of land on which, or adjacent to which, a trail has been or is expressly dedicated for public use as an equestrian, pedestrian, or other type of non-motorized recreational right-of-way and expressly accepted by the County of San Diego on behalf of the public, is eligible for the benefits of this chapter.

(Added by Ord. No. 9233 (N.S.), effective 8-11-00)

SEC. 812.103. INDEMNITY.

The County of San Diego will defend and indemnify an owner of a parcel of land as described in this chapter, from all claims, demands or liability for injury to person or property that occurs on the trail, or incidental to use of the trail, when used for any recreational purpose, excluding injury occurring in any of the following circumstances:

- (a) The owner's willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity;
- (b) Where permission for recreational use was granted for a consideration other than the benefit received at the time of dedication;
- (c) Where the person suffering injury was expressly invited by the owner to use the trail for a recreational purpose rather than merely permitted to use it;
- (d) Where the person suffering injury is a member of the owner's household.

(Added by Ord. No. 9233 (N.S.), effective 8-11-00)

**SEC. 812.104. COOPERATION OF
PROPERTY OWNER.**

Property owner shall notify County promptly of any claim, action or proceeding and cooperate fully in the defense. County's obligation to defend or indemnify owner from and against any claim, demands or liability for injury to person or property shall terminate if property owner does not cooperate with the County in its defense of the action.

(Added by Ord. No. 9233 (N.S.), effective 8-11-00)